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October 29, 2001

Chair
Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, D.C. 20503

Attn: Task Force

Re: Comments on the Council on Environmental Quality's
Notice and Request for Comments on Executive Order No.
13212

To the Council on Environmental Quality:

On May 18, 2001, the President signed Executive Order 13212 seeking to establish a federal interagency task force ("task force") to expedite review of permits or other actions necessary to accelerate the completion of energy related projects. Thereafter, the Council on Environmental Quality ("CEQ") filed a notice and request for comments ("Notice") on the President's Executive Order. The New York State Public Service Commission ("NYPSC") submits these comments in response to that Notice.

The Chairman of the NYPSC is also Chair of the New York State Board on Electric Generation Siting and the Environment ("siting board") which is charged with reviewing proposals for siting electric generation facilities. Since June 15, 2000, the Siting Board has approved construction of four new electric generating facilities in New York amounting to 2,490 MW of power. Additionally, there are nineteen other pending filings before the siting board. Under state law, the siting board must act on a completed application within one year of it being filed.

The NYPSC respectfully suggests that federal review has led to needless construction delays by duplicating state environmental reviews. Thus, the NYPSC supports the creation of a task force to examine how federal agencies can work cooperatively with states to preserve a clean environment without unnecessary delays of needed projects.

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Our most recent example of federal delay occurred in 1998, with a request from the Athens Generating Facility to construct a 1080 MW facility.¹ Well in advance of the application filing, New York requested that the Environmental Protection Agency ("EPA") confirm its continued recognition of the environmental permitting authority delegated to the siting board under the Federal Clean Water Act ("CWA").² What followed was nearly two years of discussions and pleas for the EPA to grant New York's request. In the interim, the state proceeded with its siting process, mandated by state law.³ The EPA eventually declined to continue such recognition, and instead, opted to recognize the authority of the New York State Department of Environmental Conservation ("DEC") under the CWA.⁴ That decision required the state to amend its siting law and measurably slowed the siting process because the DEC had to initiate a supplemental permitting proceeding.

Moreover, various state agencies and environmental and citizen groups participated in the state's Article X siting proceeding. On June 15, 2000, the siting board approved the construction of the plant with numerous conditions that would minimize environmental impacts. The U.S. Corps of Engineers ("Corps") did not participate in these proceedings and despite repeated inquiries, including several letters from Governor Pataki, it took the Corps almost another year until May 25, 2001, to issue the appropriate permit.⁵ Most significantly, the Corps' review duplicated what had already been done by the siting board, and did not result in any significant changes in plant design or environmental mitigation.

In sum, we propose that the task force evaluate the feasibility of allowing the Corps to rely on state findings where a state has engaged in a comprehensive review. The task force should also direct federal agencies to review energy projects in a coordinated and concurrent manner with state proceedings, or at least, be required to start the federal reviews at the same time initial applications are filed with the states to ensure that federal review and approval is not unduly delayed or hindered by unnecessary repetition.

Sincerely



Maureen O. Helmer
Chairman

Athens Generating Plant, Case No. 97-F-1563.

Letters from John Smolinsky, Chief, Environmental Compliance and Operation and John F. O'Mara, Chairman dated July 11, 1997 and August 5, 1997 respectively.

Public Service Law §§ 160-172 (McKinney's 2000).

Letter from Jeanne M. Fox, Regional administrator, EPA dated February 11, 1999.

The Corps is responsible for issuing a permit pursuant to section 10 of the Rivers and Harbors Act and section 404 of the CWA.